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14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF WASHINGTON

16 NICHOLAS ROLOVICH,
17
18 Plaintiff,

19 v.

20 WASHINGTON STATE
21 UNIVERSITY, et al.,
22
23 Defendants.

NO. 2:22-CV-00319-TOR

WSU DEFENDANTS'
MOTION TO DISMISS

May 11, 2023
With Oral Argument: 11:00 a.m.
Spokane Courtroom 902

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2 2022), <http://bit.ly/3l3SnvW>3

3 Washington State Department of Health, *COVID-19 Data Dashboard*3, 4

4 **Constitutional Provisions**

5 Wash. Const. art. 1, § 11 2, 12, 38

I. INTRODUCTION

This is the rare case in which the plaintiff accuses his employer of discriminating against him based on his religious beliefs but, instead of identifying any truly *religious* beliefs, his complaint invokes junk science, conspiracy theories, and other purely secular opinions to explain his opposition to the COVID-19 vaccines. Plaintiff Nicholas Rolovich was the head football coach at Defendant Washington State University (WSU or the University) until December 2021. At that time, an emergency gubernatorial proclamation required state employees to be fully vaccinated against COVID-19, unless they qualified for a medical or religious exemption that could be reasonably accommodated. Throughout the spring and summer of 2021, Rolovich consistently and publicly expressed his refusal to get vaccinated. But he never claimed a *religious* reason for his refusal until he applied for a religious exemption and accommodation less than one week before the deadline. WSU denied Rolovich's request, determining that it could not accommodate him without experiencing an undue hardship. WSU also questioned whether he had sincerely held religious beliefs precluding compliance with the vaccine requirement. WSU then terminated Rolovich's employment for just cause.

Rolovich now claims that Defendants WSU, its Athletics Director Patrick Chun (together, the WSU Defendants), and Governor Jay Inslee discriminated against him on the basis of his religious beliefs. Yet his First Amended Complaint (FAC or Complaint) fails to even generally describe the nature of those beliefs.¹ For that reason, and because accommodating Rolovich would have imposed an undue

¹ The Complaint is appended to the Notice of Removal. ECF No. 1-1 at 73–104.

1 hardship on WSU, the Complaint fails to state a claims under Title VII, 42 U.S.C.
2 § 2000e, or the Washington Law Against Discrimination, RCW ch. 49.60 (WLAD).

3 Rolovich's other claims are also deficient. His claims under 42 U.S.C.
4 § 1983—alleging violations of the Free Exercise Clause and Due Process Clause—
5 fail for a variety of reasons, including because WSU is not a “person” that may be
6 sued under § 1983 and because Rolovich fails to allege unconstitutional conduct by
7 Chun individually, who in any event has qualified immunity. Rolovich's amorphous
8 due process claim fails because he has not plausibly alleged a deprivation of a liberty
9 or property interest or that he received constitutionally inadequate process. Rolovich
10 has no viable claim under article I, section 11 of the Washington Constitution, which
11 does not allow a private right of action for damages based on constitutional
12 violations. Finally, Rolovich's breach of contract claims must be dismissed because
13 Chun is not a party to Rolovich's employment agreement and WSU had “just cause”
14 to discharge Rolovich because (among other reasons) he did not meet a legal
15 requirement of continued employment. For those reasons, the Court should dismiss
16 the Complaint with prejudice.

17 II. FACTS

18 This factual summary is based on the Complaint, documents it references, and
19 judicially noticeable facts. *See* Fed. R. Civ. P. 12(b)(6); *Tellabs, Inc. v. Makor Issues*
20 *& Rights, Ltd.*, 551 U.S. 308, 322 (2007). The WSU Defendants ask the Court to
21 take judicial notice of the government records and data cited herein—including from
22 the U.S. Food and Drug Administration (FDA), the U.S. Centers for Disease Control
23 and Prevention (CDC), and the Washington State Department of Health (DOH). *See*
24 Fed. R. Evid. 201; *King v. Cnty. of L.A.*, 885 F.3d 548, 555 (9th Cir. 2018).

1 **A. The COVID-19 Pandemic and Washington’s Response**

2 In response to the pandemic, “[g]overnments at all levels instituted restrictions
3 to curb the transmission of the virus.” *Slidewaters LLC v. Wash. State Dep’t of Labor*
4 *& Indus.*, 4 F.4th 747, 752 (9th Cir. 2021). Even with those restrictions, COVID-19
5 has killed over 1.1 million Americans—including over 15,500 Washingtonians²—
6 making it the “deadliest disease in American history.” *Florida v. Dep’t of Health &*
7 *Hum. Servs.*, 19 F.4th 1271, 1275 (11th Cir. 2021) (cleaned up).

8 On February 29, 2020, amidst the initial COVID-19 outbreak in Washington,
9 Governor Inslee proclaimed a state of emergency. *Slidewaters*, 4 F.4th at 752; Procl.
10 20-05. Between December 2020 and February 2021, the FDA issued Emergency
11 Use Authorizations (“EUAs”) for three COVID-19 vaccines developed by Pfizer,
12 Moderna, and Johnson & Johnson (“J&J”).³ FDA gave full approval to Pfizer’s
13 vaccine for people 16 and older on August 23, 2021, and to Moderna’s for people
14 18 and older on January 31, 2022. *Church v. Biden*, No. CV 21-2815 (CKK), 2022
15 WL 1491100, at *2 (D.D.C. May 11, 2022). The CDC considers the vaccines to be

17 ² CDC, COVID Data Tracker, <http://bit.ly/3LadJ5s> (last visit Mar. 12, 2023); DOH,
18 *COVID-19 Data Dashboard*, Disease Activity and Testing, <https://bit.ly/3AKV0Gq>
19 (last update Mar. 8, 2023).

20 ³ FDA, *FDA Authorizes Pfizer-BioNTech COVID-19 Vaccine for Emergency Use in*
21 *Children 5 through 11 Years of Age* (Oct. 29, 2021), <http://bit.ly/3ZSWgmb>; FDA,
22 *Janssen COVID-19 Vaccine* (May 11, 2022), <http://bit.ly/3l3SnnW>; FDA, *FDA*
23 *Authorizes Booster Dose of Pfizer-BioNTech COVID-19 Vaccine for Certain*
24 *Populations* (Sept. 22, 2021), <http://bit.ly/3l2nEiY>.

safe and effective in reducing the risk of severe illness or death due to COVID-19.⁴

B. The Delta Surge and Proclamation 21-14

In summer 2021, the “Delta variant” emerged—a new, highly infectious COVID-19 strain. *See Does 1-6 v. Mills*, 16 F.4th 20, 26–27 (1st Cir. 2021). Twice as infectious as earlier variants, *id.*, Delta spread like wildfire, causing Washington’s daily case count to jump from a low of 329 on June 28 to 4,449 on September 7, 2021.⁵ While “no vaccine is 100% effective,” the COVID-19 vaccines proved highly effective at preventing the virus’s spread and severe disease—particularly with the Delta variant. *Mass. Corr. Officers Federated Union v. Baker*, 567 F. Supp. 3d 315, 319–20 (D. Mass. 2021). According to a September 2021 CDC report (when Delta was dominant), unvaccinated people were 5 times more likely to contract, 10 times more likely to be hospitalized with, and 11 times more likely to die from COVID-19 than fully vaccinated people.⁶ Despite such stark disparities, the Delta surge coincided with a steady decline in vaccination rates.⁷ In August 2021, nearly 30% of eligible Washingtonians were unvaccinated. Procl. 21-14 at 2.

On August 9, 2021, Governor Inslee issued Proclamation 21-14 (together with subsequent iterations, the Proclamation), prohibiting healthcare providers and most

⁴ CDC, *Overview of COVID-19 Vaccines* (Nov. 1, 2022), <http://bit.ly/3FdTjVv>.

⁵ DOH, *COVID-19 Data Dashboard*, Disease Activity and Testing, *supra* note 2.

⁶ CDC, *Monitoring Incidence of COVID-19 Cases, Hospitalizations, and Deaths, by Vaccination Status — 13 U.S. Jurisdictions, April 4–July 17, 2021* (Sept. 17, 2021), <http://bit.ly/3YQ9tMM>.

⁷ DOH, *COVID-19 Data Dashboard*, Vaccinations, *supra* note 2.

1 state employees from working after October 18, 2021, without being fully vaccinated
2 against COVID-19, *i.e.*, at least two weeks post-final dose. Procl. 21-14.⁸ When it
3 took effect, the Proclamation applied to at least 681,000 workers across the three
4 covered sectors—state government, health care, and education. *Wise v. Inslee*, No.
5 2:21-CV-0288-TOR, 2021 WL 4951571, at *1 (E.D. Wash. Oct. 25, 2021). The
6 Proclamation required covered employers to evaluate requests for medical and
7 religious exemptions and provide reasonable accommodations as required by state
8 and federal antidiscrimination statutes. Procl. 21-14.2 at 5–6. Covered employers
9 had to “conduct[] an individualized assessment and determination of each
10 individual’s need and justification for an accommodation.” *Id.* at 6. And covered
11 employers were “prohibited from providing accommodations” if “based on false,
12 misleading, or dishonest grounds or information” or “the personal preference of the
13 individual,” rather than “an inability to get vaccinated because of a disability or a
14 conflict with a sincerely held religious belief, practice, or observance.” *Id.*

15 C. WSU’s Implementation of the Proclamation

16 Before the Governor issued the Proclamation, WSU’s COVID-19 vaccine
17 policy had allowed employees to claim an exemption merely by asserting they had
18 a medical reason or “personal/religious” objection. FAC ¶ 33. The Proclamation
19 superseded this policy by providing no exemption for “personal” reasons beyond
20 sincerely held religious beliefs. Declaration of Zachary J. Pekelis (Pekelis Decl.),
21
22

23 ⁸ See Office of Gov. Jay Inslee, Proclamations, [https://www.governor.wa.gov/office-](https://www.governor.wa.gov/office-governor/official-actions/proclamations)
24 [governor/official-actions/proclamations](https://www.governor.wa.gov/office-governor/official-actions/proclamations) (last visit Mar. 15, 2023).

1 Ex. A.⁹ To implement the Proclamation, WSU instructed employees to provide proof
2 of vaccination or request an exemption by October 4, 2021, the last day to get the
3 final dose to be considered fully vaccinated by the October 18 deadline. *Id.*

4 The University evaluated requests for religious exemptions and
5 accommodations in a two-step process. FAC ¶ 61. First, a committee of staff from
6 WSU Human Resources Services (HRS) and the Office of Civil Rights and
7 Compliance reviewed the exemption request to determine whether it was based on a
8 “sincerely held religious belief.” FAC ¶¶ 60–61; Pekelis Decl., Ex. B. That first step
9 was generally “blind”—i.e., “the identities of the individuals requesting exemptions
10 are unknown to the members of the review committee”—unless “additional
11 information is needed through follow-up contact.” Pekelis Decl., Ex. B at 20. The
12 second step was a “separate accommodation review.” *Id.* at 21. That step determined
13 “whether the unvaccinated employee will be able to perform their duties without
14 risking the health and safety of the community.” *Id.* The ultimate accommodation
15 decision was left to each employee’s assigned department. *Id.*, Ex. C; FAC ¶ 62.

16 **D. Rolovich Requests a Religious Exemption and Accommodation**

17 In January 2020, WSU hired Rolovich as its head football coach. FAC ¶ 11.
18 In May 2021, Rolovich informed Chun that he did not plan to become vaccinated
19 against COVID-19. *Id.* ¶ 31. Rolovich claims to have had multiple “reasons for
20 refusing to receive a COVID vaccine”—“religious, personal, and scientific.”
21 *Id.* ¶ 30. Yet the Complaint grounds Rolovich’s refusal in pseudo-scientific
22

23 ⁹ The Complaint incorporates Exhibits A through K to the Pekelis Declaration by
24 reference. *See* FAC ¶¶ 5, 60 & n.4, 61 & n.5, 62–70, 91–93; Pekelis Decl. ¶¶ 3–13.

1 arguments. *See, e.g., id.* ¶ 57 (citing his concerns with “potential risks” in taking
2 what he calls an “experimental vaccine”); *id.* ¶¶ 50–56 (suggesting that Pfizer
3 vaccine approved by FDA is biologically distinct from Pfizer vaccine authorized for
4 emergency use). In contrast, the Complaint contains strikingly few (and vague)
5 references to Rolovich’s religious beliefs. He cryptically alleges that, at some point
6 during “summer of 2021,” he “discerned that it would violate his conscience to
7 receive any available COVID-19 vaccine,” and that, as a “practicing Catholic,” he
8 is “morally obliged to obey his conscience.” *Id.* ¶¶ 24, 25, 28. But the Complaint
9 nowhere explains how Rolovich’s religious beliefs actually prevented him from
10 being vaccinated against COVID-19.

11 Rolovich never mentioned a religious objection to WSU before August 19,
12 2021, when he first asked Chun and Deputy Athletics Director Bryan Blair about
13 WSU’s religious exemption process. *Id.* ¶ 41. Rolovich does not allege that he told
14 Chun and Blair the nature of any supposed religious objection at that August 19
15 meeting (or at any point thereafter). On September 28—over a month after the
16 August 19 meeting and just six days before the October 4 deadline—Rolovich finally
17 sent a request for a religious exemption and accommodation to HRS. *Id.* ¶ 63.

18 The first-step panel determined that, based only on its blind review of
19 Rolovich’s request form, he had stated a “sincerely held religious belief” preventing
20 him from being vaccinated against COVID-19. *Id.* ¶ 64. HRS notified Chun in an
21 email on October 6, 2022, instructing the Athletics Department (the Department) “to
22 determine if the employee is able to perform essential functions of the position and
23 meet the COVID-19 safety measures consistent with the recommendations of the
24 state and protect the health and safety of the WSU community.” Pekelis Decl., Ex.

1 C at 25. HRS suggested various “terms and conditions” for potential
2 accommodation, such as requiring Rolovich to mask and “distance from others on
3 WSU property.” *Id.* HRS asked Chun to “contact the HRS Exemptions team . . . to
4 let us know” if “[y]ou have no concern with this request,” “[i]f you are **NOT** able
5 to accommodate this request with the above recommendations,” or “[i]f you have
6 any questions or would like to meet to discuss further.” *Id.* at 26.

7 **E. The Department Determines It Cannot Accommodate Rolovich**

8 On October 13, 2021, the Department submitted two memos to HRS. FAC
9 ¶¶ 66–67; Pekelis Decl., Exs. D–E. The first memo concluded that, by remaining
10 unvaccinated—regardless of the reason—Rolovich “would not be able to perform
11 the essential functions of his job” with the suggested accommodations, as it “would
12 create an undue hardship on the . . . Department and WSU as a whole.” Pekelis Decl.,
13 Ex. D at 28. The memo noted that his “[c]oaching duties require close contact with
14 student-athletes as well as other Department personnel and the public.” *Id.* at 30.
15 Without being vaccinated, Rolovich was unable to safely (or legally) perform many
16 of the head football coach’s core duties at that point in the pandemic, such as to
17 (1) “recruit at a Pac-12 level due to restrictions placed on unvaccinated visitors by
18 various states, counties and school districts”; (2) “entertain official recruit visitors to
19 WSU’s campus while masked and social distanced”; (3) “attend[] individual position
20 meetings”; (4) “safely engage one-on-one with players or assistant coaches”; and
21 (5) “fulfill media and fundraising obligations,” such as the “Pac-12 Football Media
22 Day in Los Angeles,” the “WSU Football Coaches Show,” “pep rallies,” and “live
23 donor meetings.” *Id.* at 28–30. The Department also expressed “concerns regarding
24 [Rolovich’s] ability to comply with” a face-covering requirement, noting that he had

1 “frequently removed [his] mask to coach” while players and other coaches were “in
2 close proximity.” *Id.* at 30.

3 The second memo countered HRS’s “initial conclusion that Rolovich . . .
4 demonstrate[d] a sincerely held religious belief against being vaccinated for
5 COVID-19.” *Id.*, Ex. E at 32. The Department noted that Rolovich had repeatedly
6 “made it clear to Pat Chun . . . and many [others] . . . that he was unwilling to take
7 the vaccine based on his independent research,” which led Rolovich to conclude that
8 the vaccine was “not safe” and “would negatively impact his mortality.” *Id.* Rolovich
9 had also “been vocal and consistent in his opinions and skepticisms about the
10 COVID-19 virus and the full nature of the public health emergency,” asserting that
11 the “government[,] and therefore the vaccine[,] could not be trusted.” *Id.* It was only
12 after the Proclamation—and after Rolovich “was unable to secure the necessary
13 documentation” to support a “medical exemption”—that he first “mentioned religion
14 in reference to seeking an exemption.” *Id.* at 32–33. The Department recommended
15 “re-evaluation of [Rolovich’s] claimed sincerely held religious belief.” *Id.* at 33.

16 To assist the Department in its accommodation decision, WSU Environmental
17 Health & Safety (“EH&S”) provided a memo assessing the “reasonable and
18 necessary interventions and countermeasures to ensure the safety of the employee
19 and others the employee may be in contact with.” Pekelis Decl., Ex. F at 35. EH&S’s
20 memo listed four pages of interventions, including maintaining at least six feet of
21 distance when possible, wearing a mask in all WSU facilities and an N95 respirator
22 whenever within six feet of others for longer than ten minutes, and renting additional
23 buses or booking additional flights. *Id.* at 39–42. EH&S noted that its role was *not*
24 to “determine whether these interventions and countermeasures fundamentally alter

1 the employee's job and cannot be accommodated." *Id.* at 35.

2 The Department responded to EH&S that it "remained concerned that
3 [Rolovich] cannot safely and effectively perform his assigned duties and that
4 accommodation in these circumstances would create an undue hardship for WSU
5 Athletics." *Id.*, Ex. G at 44. The Department observed that "[f]requent close physical
6 proximity to and contact with others is an inherent part of coaching" and that social
7 distancing is "exceedingly difficult on buses, and could require that a coach travel
8 separately in between airports, hotels, and stadiums," which is "not practical" and
9 "creates a financial burden." *Id.* Furthermore, "[a]lmost all recruiting travel is done
10 via commercial flights"—where social distancing is impossible—and coaches
11 "directly enter recruit homes, high schools or other training facilities." *Id.*

12 **F. WSU Denies Rolovich's Request and Begins the Separation Process**

13 On October 18, 2021, HRS informed Rolovich by email that WSU had denied
14 his request for an accommodation. FAC ¶ 90; Pekelis Decl., Ex. H at 47. The email
15 stated: "[b]ased upon the nature of [the] head coaching responsibilities and core job
16 functions and activities, the University has determined [Rolovich] cannot safely and
17 effectively do [his] job without undue hardship to the University." Pekelis Decl., Ex.
18 H at 47. HRS also noted that, due to Rolovich's "prior statements to WSU staff and
19 others regarding vaccination" and "the timing of [his] request for a religious
20 accommodation, the University questions the assertion that [his] sincerely held
21 religious views conflict with the University's vaccine requirement." *Id.*

22 Under Rolovich's employment agreement (the Agreement), termination
23 "without cause" entitled Rolovich to liquidated damages, while termination "for just
24 cause" did not. ECF No. 1-1 at 43. The Agreement gives the term "Just Cause" its

1 “normally understood meaning in employment contracts.” *Id.* at 41. It also lists
2 various non-exclusive “examples,” including “[a]ny act of misconduct by Employee,
3 including . . . an act of dishonesty . . . [or] insubordination, or . . . endangering
4 others”; “[a]n intentional or major violation . . . of any law, rule, [or] regulation . . .
5 which may in the reasonable judgment of the University reflect adversely upon the
6 University or its athletic program”; and “Conduct of Employee seriously prejudicial
7 to the best interests of the University or its athletic program.” *Id.* at 41–42.

8 In a meeting on October 18, 2021, Chun provided Rolovich with a “Written
9 Notice of Intent to Terminate for Just Cause.” FAC ¶ 93. The notice explained that
10 Rolovich’s “decision to forego a COVID-19 vaccination has impacted [his] ability”
11 to perform his contractual duties for a variety of reasons, including his inability to
12 attend fundraising and media events, limited engagement with players and assistant
13 coaches, negative impact on recruiting, and “poor planning, lack of communication,
14 and a void in leadership.” Pekelis Decl., Ex. I at 51–52.

15 **G. WSU Denies Rolovich’s Appeal and Terminates His Employment**

16 Rolovich challenged Chun’s decision through the process set out in the
17 Agreement—first in a November 2, 2021, letter from his attorney to Chun, and then
18 in an appeal to University President Kirk Schulz. FAC ¶ 5; Pekelis Decl., Exs. J–K.
19 Both Chun and Schulz denied Rolovich’s appeals. FAC ¶ 5. In Schulz’s denial letter,
20 he explained that because Rolovich had not been vaccinated against COVID-19 nor
21 received an accommodation, under the Proclamation he was “no longer eligible to
22 engage in work for the University”—a fact that, “by itself, provides just cause for
23 termination under the Agreement.” Pekelis Decl., Ex. K at 61–62. Schulz further
24 found that Rolovich had “been limited in [his] ability to fully perform certain

1 essential job duties,” resulting in “contract violations” such as “conduct seriously
2 prejudicial to the best interests of the University.” *Id.* at 62. Schulz agreed with Chun
3 that “maintaining the prior status quo would result in an undue hardship on the
4 University by creating unnecessary risk to the safety of its students and staff, . . .
5 members of the press, potential athletic recruits, donors, and [others],” “given the
6 myriad duties and close contacts necessary to perform [Rolovich’s] job duties.” *Id.*
7 WSU terminated Rolovich’s employment for just cause effective December 6. FAC
8 ¶ 5.

9 **H. Rolovich’s Lawsuit**

10 Rolovich filed (but did not serve) his original complaint in Whitman County
11 Superior Court on November 14, 2022, naming WSU, Chun, and the Governor as
12 Defendants. ECF No. 1-1 at 4. On December 9, Rolovich filed and served the FAC.
13 *Id.* at 73. It contains seven causes of action, six of which are against all three
14 Defendants: (1) breach of contract and the implied covenant of good faith and fair
15 dealing; (2) religious discrimination under the WLAD; (3) a damages claim under
16 article 1, section 11 of the Washington Constitution; (4) religious discrimination
17 under Title VII; (5) a 42 U.S.C. § 1983 claim against Chun only; (6) a § 1983 claim
18 against all Defendants; and (7) a federal due process claim. FAC ¶¶ 98–149.¹⁰

19 On December 14, 2022, Defendants removed the case to federal court. ECF
20 No. 1. Rolovich filed a motion to remand on January 17, 2023, ECF No. 12, which
21 this Court denied on March 8, ECF No. 16.

22
23 ¹⁰ Although the unserved original complaint contained a state-law wage withholding
24 claim, the FAC omits this claim. *Compare* ECF No. 1-1 at 29, *with id.* at 95–102.

III. ARGUMENT

A. Legal Standard

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* When ruling on the motion, “courts must consider the complaint in its entirety, as well as other sources . . . , in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc.*, 551 U.S. at 322.

The Court may take notice of “legislative facts” in deciding a Rule 12(b)(6) motion, particularly “when construing or applying the Constitution” or “statutes.” *Hightower v. City & Cnty. of S.F.*, No. C-12-5841 EMC, 2013 WL 361115, at *3 (N.D. Cal. Jan. 29, 2013) (cleaned up). Whether a complaint states a claim for relief “requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679 (cleaned up). Dismissal may be based on either “the lack of a cognizable legal theory or absence of sufficient facts alleged under a cognizable legal theory.” *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011). “Leave to amend need not be granted, and dismissal may be ordered with prejudice, if amendment would be futile,” such as when a claim “fails as a matter of law.” *Gamble v. Pac. NW Reg’l Council of Carpenters*, No. 2:14-cv-455RSM, 2015 WL 402782, at *2, *7 (W.D. Wash. Jan. 29, 2015) (citing *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998)).

1 **B. The Complaint Fails to State a Title VII Claim (Count IV)**

2 **1. Rolovich has no Title VII claim against Chun**

3 Any Title VII claim against Chun should be dismissed with prejudice because
4 individual employees cannot be liable under the statute. *Miller v. Maxwell's Int'l*
5 *Inc.*, 991 F.2d 583, 587 (9th Cir. 1993); *Magden v. Easterday Farms*, No. 2:16-CV-
6 00068-JLQ, 2017 WL 1731705, at *5 (E.D. Wash. May 3, 2017) (collecting cases).

7 **2. The Complaint fails to state a Title VII claim against WSU**

8 **a. Accommodating Rolovich would have imposed an undue hardship**

9 As Rolovich acknowledges, WSU denied his accommodation request because
10 it found that an unvaccinated head football coach “could not ‘safely and effectively
11 do [his] job without undue hardship to the University.’” FAC ¶ 92. The “undue
12 hardship” defense is a complete defense to a Title VII failure-to-accommodate claim.
13 *See* 42 U.S.C. § 2000e(j). An accommodation causes “undue hardship” if it would
14 “result[] in ‘more than a *de minimis* cost’ to the employer.” *Ansonia Bd. of Educ. v.*
15 *Philbrook*, 479 U.S. 60, 67 (1986) (quoting *Trans World Airlines, Inc. v. Hardison*,
16 432 U.S. 63, 84 (1977)).¹¹ This “could include additional costs in the form of lost
17 efficiency” or “more than a *de minimis* impact on coworkers.” *Balint v. Carson City*,
18 180 F.3d 1047, 1054 (9th Cir. 1999) (cleaned up).

19 Numerous federal courts have held that accommodating employees’
20 religiously based opposition to COVID-19 vaccines would impose undue hardships
21 on employers in a wide range of sectors. *See, e.g., Does 1-6 v. Mills*, 16 F.4th 20, 36

22 _____
23 ¹¹ The Supreme Court has accepted a case in which it has been asked to reconsider
24 the *Hardison* standard. *See Groff v. DeJoy*, 143 S. Ct. 646 (2023) (granting cert).

1 (1st Cir. 2021) (denying preliminary injunction because accommodating healthcare
2 workers by allowing them to remain unvaccinated against COVID-19 would cause
3 employer to suffer undue hardship); *We the Patriots USA, Inc. v. Hochul*, 17 F.4th
4 266, 292, *opinion clarified*, 17 F.4th 368 (2d Cir. 2021) (per curiam) (same);
5 *O’Hailpin v. Hawaiian Airlines, Inc.*, 583 F. Supp. 3d 1294, 1309–10 (D. Haw.
6 2022) (same for airline employees); *Brox v. Woods Hole, Martha’s Vineyard &*
7 *Nantucket Steamship Auth.*, 590 F. Supp. 3d 359, 366–67 (D. Mass. 2022) (same for
8 ferry workers). At the time WSU denied Rolovich’s accommodation request,
9 unvaccinated people were five times more likely to contract COVID-19—and ten
10 times more likely to die from it—than those who were fully vaccinated. *Supra*
11 Section II.B. Allowing the head football coach to remain unvaccinated would have
12 increased the risk of exposing others with whom he came into close contact—
13 including WSU staff and student-athletes—to the virus, “which is obviously a
14 significant hardship.” *Does 1-2 v. Hochul*, --- F. Supp. 3d ----, No. 21-CV-
15 5067(AMD) (TAM), 2022 WL 4637843, at *16 (E.D.N.Y. Sept. 30, 2022)
16 (dismissing Title VII claim with prejudice because accommodating plaintiff’s
17 religious beliefs opposing COVID-19 vaccination would pose undue hardship); *see*
18 *also D’Cunha v. Northwell Health Sys.*, No. 1:22-CV-0988 (MKV), 2023 WL
19 2266520, at *3 (S.D.N.Y. Feb. 28, 2023) (same); *Kane v. de*
20 *Blasio*, --- F. Supp. 3d ----, No. 21 CIV. 7863 (NRB), 2022 WL 3701183, at *13
21 (S.D.N.Y. Aug. 26, 2022) (same); *Lowe v. Mills*, No. 1:21-CV-00242-JDL, 2022
22 WL 3542187, at *9–10 (D. Me. Aug. 18, 2022) (same). Accommodating Rolovich
23 would also have increased travel costs, harmed recruiting and fundraising, and
24 damaged WSU’s reputation and donor commitments—which also represent

1 substantial burdens. FAC ¶ 70; Pekelis Decl., Exs. D, G; *Together Employees v.*
2 *Mass Gen. Brigham Inc.*, 573 F. Supp. 3d 412, 435 (D. Mass. 2021), *aff'd*, 32 F.4th
3 82 (1st Cir. 2022) (rejecting Title VII challenge to vaccine policy and noting
4 “[r]eputational effects on an employer can also impose an undue hardship”) (citing
5 *Cloutier v. Costco Wholesale Corp.*, 390 F.3d 126, 136 (1st Cir. 2004)).

6 For those reasons, Rolovich’s Title VII claim fails as a matter of law under
7 the undue hardship defense, and the Court should dismiss the claim with prejudice.

8 **b. Rolovich fails to identify any religious beliefs against vaccination**

9 Rolovich’s Title VII claim against WSU fails for a separate, independent
10 reason: the Complaint does not allege facts establishing that Rolovich’s opposition
11 to the COVID-19 vaccines stemmed from beliefs that were religious in nature.
12 Instead, the Complaint couches Rolovich’s objection in his own pseudo-scientific
13 concerns over the “potential risks of taking” what he calls an “experimental
14 vaccine.” FAC ¶ 57. Title VII affords no protection to such purely secular opinions.

15 To state a Title VII religious discrimination claim on a failure-to-
16 accommodate theory, “a plaintiff must plausibly allege that ‘(1) he had
17 a bona fide religious belief, the practice of which conflicts with an employment
18 duty; (2) he informed his employer of the belief and conflict; and (3) the employer
19 . . . subjected him to an adverse employment action because of his inability to fulfill
20 the job requirement.’” *Grubbs v. Arizona*, No. CV-20-02369-PHX-DJH, 2021 WL
21 4552419, at *4 (D. Ariz. Oct. 5, 2021) (quoting *Peterson v. Hewlett-Packard Co.*,
22 358 F.3d 599, 606 (9th Cir. 2004)). Here, Rolovich fails to allege the most basic
23
24

1 element of a religious discrimination claim: a bona fide *religious* belief.¹²

2 Instead, Rolovich alleges in a conclusory fashion that “it would violate his
3 conscience to receive any available COVID-19 vaccine” and that he “holds sincere
4 religious beliefs that precluded him from receiving any of the COVID-19 vaccines
5 available during the times relevant to this complaint.” FAC ¶¶ 24, 121. But at no
6 point does he allege *what* his beliefs are, *how* those beliefs are linked to his religion,
7 or *why* those beliefs precluded him from being vaccinated. These omissions are fatal
8 to his Title VII claim. *See, e.g., Turner v. Ass’n of Apt. Owners of Wailea Point Vill.*,
9 739 F. App’x 874, 877 (9th Cir. 2018) (affirming grant of summary judgment on
10 Title VII claim because plaintiff could not establish actual conflict between religious
11 belief and work requirement); *Pedreira v. Ky. Baptist Homes for Child., Inc.*, 579
12 F.3d 722, 728 (6th Cir. 2009) (affirming dismissal where plaintiff had “not alleged
13 any particulars about her religion that would even allow an inference that she was
14 discriminated against on account of her religion”); *Leake v. Raytheon Techs. Corp.*,

15 _____
16 ¹² The Complaint’s only hint of a religious belief is the allegation that Rolovich “was
17 uncomfortable because he did not know how WSU would react to him sharing his
18 religious opposition to medical research based on aborted fetal tissue, given that
19 WSU professors have in the past publicly defended such research.” *Id.* ¶ 42. The
20 Complaint does not connect this statement to vaccines in general or any COVID-19
21 vaccine in particular, nor allege that such “opposition” was what *actually* motivated
22 Rolovich’s vaccine objection. Instead, this allegation attempts to explain why
23 Rolovich supposedly did not mention religion at all to WSU until extremely late in
24 the process—not the nature of his purported religious objection.

1 No. CV-22-00436-TUC-RM, 2023 WL 2242857, at *5 (D. Ariz. Feb. 27, 2023)
2 (dismissing Title VII challenge to COVID-19 vaccination policy where “Plaintiffs
3 never alleged they were members of any protected class, or what their religious
4 beliefs were”); *Addison v. Amazon.com, Inc.*, No. CV 22-01071 (FLW), 2022 WL
5 2816946, at *5 (D.N.J. July 19, 2022) (dismissing Title VII claim because “Plaintiff
6 fails to provide any additional information about the nature of her beliefs, and
7 therefore, she cannot establish that she held sincere religious beliefs”).

8 The leading Title VII case on vaccination requirements is directly on point. In
9 it, the Third Circuit affirmed the dismissal of a former hospital employee’s Title VII
10 lawsuit because it determined his opposition to flu vaccination—which the hospital
11 required of its employees—was not “religious in nature.” *Fallon v. Mercy Cath.*
12 *Med. Ctr. of Se. Pa.*, 877 F.3d 487, 494 (3d Cir. 2017). Fallon believed that “if he
13 yielded to coercion and consented to the hospital[’s] mandatory policy, he would
14 violate his conscience as to what is right and what is wrong.” *Id.* at 492. This
15 objection did not constitute a religious belief, which must (1) “address[] fundamental
16 and ultimate questions having to do with deep and imponderable matters,” (2) be
17 “comprehensive in nature; it consists of a belief-system as opposed to an isolated
18 teaching,” and (3) be accompanied by “certain formal and external signs” of religion.
19 *Id.* at 491 (cleaned up).¹³ Fallon’s “beliefs do not occupy a place in his life similar
20 to that occupied by a more traditional faith,” his “objection to vaccination is . . . not
21 religious and not protected by Title VII,” so the court dismissed his claim. *Id.* at 492.

22
23 ¹³ The Ninth Circuit has adopted this definition in the Establishment Clause context.
24 *See, e.g., Alvarado v. City of San Jose*, 94 F.3d 1223, 1229–30 (9th Cir. 1996).

1 Rolovich’s alleged religious objection is indistinguishable from Fallon’s.
2 Rolovich alleges that it “would violate his conscience to receive . . . [the] vaccine,”
3 FAC ¶ 24, just as Fallon claimed “he must follow his conscience and refuse the
4 influenza vaccine,” *Fallon*, 877 F.3d at 492. And like Fallon, Rolovich fails to
5 connect this “isolated moral teaching”—namely, vaccine opposition—to a
6 “comprehensive system of beliefs about fundamental or ultimate matters.” *Id.*

7 The only real difference in Rolovich’s framing of his anti-vaccination belief
8 is his assertion that “a Catholic is morally obliged to obey his conscience.” FAC
9 ¶ 28. This additional gloss is irrelevant. Whatever his belief system, a Title VII
10 plaintiff must do more than make a conclusory allegation that his objection is based
11 on “conscience.” He must provide a short and plain statement as to *how* that
12 objection is actually “religious in nature,” as opposed to “essentially political,
13 sociological, or philosophical.” *Fallon*, 877 F.3d at 490 (quoting *United States v.*
14 *Seeger*, 380 U.S. 163, 165 (1965)); Fed. R. Civ. P. 8(a)(2). Were the law otherwise,
15 a plaintiff could state a Title VII religious discrimination claim simply by asserting
16 that his “conscience” forbids compliance with any generally applicable workplace
17 policy, with no further elaboration or explanation—and “in effect to permit every
18 citizen to become a law unto himself.” *Emp’t Div., Dep’t of Hum. Res. of Or. v.*
19 *Smith*, 494 U.S. 872, 879 (1990) (cleaned up).

20 Recent cases concerning COVID-19 vaccine mandates support this sensible
21 rule. *See, e.g., Finkbeiner v. Geisinger Clinic*, --- F. Supp. 3d ----, No. 4:21-CV-
22 01903, 2022 WL 3702004, at *2–4 (M.D. Pa. Aug. 26, 2022) (plaintiff’s allegation
23 that she was “a Christian and hold[s] a sincere religious belief that I have a God
24 given right to make my own choices regarding what is good or bad for me” had

1 “fail[ed] to establish sincere religious opposition” because it was “an ‘isolated moral
2 teaching’ . . . not a comprehensive system of beliefs about fundamental or ultimate
3 matters,’” and that indulging “‘God given right to make [her] own choices’” would
4 “amount to ‘a blanket privilege’ and a ‘limitless excuse for avoiding all unwanted
5 . . . obligations.’”) (quoting *Fallon*, 877 F.3d at 492; *Africa v. Pennsylvania*, 662
6 F.2d 1025, 1030–31 (3d Cir. 1981)); *Blackwell v. Lehigh Valley Health Network*,
7 No. 5:22-CV-03360-JMG, 2023 WL 362392, at *1-3, *7-8 (E.D. Pa. Jan. 23, 2023)
8 (plaintiff’s allegation that “‘her religious beliefs forbid[] insertion of an unwanted
9 foreign object into her body,’” was insufficient to state religious objection, but
10 instead indicated that she “challenge[d] Defendant’s *factual* and *scientific* basis for
11 imposing the testing requirement,” and “suggest[ed] the basis for Plaintiff’s belief is
12 ‘political, sociological, or philosophical’ – and not religious.”) (quoting *Fallon*, 877
13 F.3d at 490); *Brox*, 590 F. Supp. 3d at 366 n.7 (finding “idiosyncratic” and without
14 “grounding in religious practice” plaintiff’s stated reasons for opposing vaccine
15 mandate, including that “Jesus tells me that it is unwise to put the COVID vaccine
16 into my body, his creation” and “I believe my God will guide me and protect me and
17 [God] has told me not to get the vaccine at this time”).

18 Rolovich’s Complaint describes his vaccine objection in terms strikingly
19 similar to those plaintiffs’ objections. Rolovich’s asserted belief that he “‘must
20 always obey the certain judgment of his conscience,’” FAC ¶ 28, essentially seeks
21 “a blanket privilege” and a “limitless excuse for avoiding all unwanted obligations,”
22 *Finkbeiner*, 2022 WL 3702004, at *4 (cleaned up). And Rolovich’s own statements
23 (such as his concerns over “the potential risks of taking [an] experimental vaccine,”
24 FAC ¶ 57), “only reinforces that [his] opposition stems from [his] medical beliefs,”

1 *Finkbeiner*, 2022 WL 3702004, at *4, and “suggests that the basis for [his] belief is
2 political, sociological, or philosophical – and not religious,” *Blackwell*, 2023 WL
3 362392, at *8; *see also Egelkrout v. Aspirus, Inc.*, No. 22-CV-118-BBC, 2022 WL
4 2833961, at *3 (W.D. Wis. July 20, 2022) (“[P]laintiff makes no claim that the
5 testing requirement conflicted with her genuinely held religious beliefs. Instead,
6 plaintiff opposed the testing for personal and medical reasons . . .”).

7 In sum, Rolovich’s Complaint fails to spell out his religious objection with
8 sufficient clarity to satisfy Rule 8(a)(2). It is not enough for Rolovich to vaguely
9 reference his exemption request form (which he does not attach or quote), for the
10 operative facts must be stated in the Complaint itself. *Crayon v. Asuncion*, No. CV
11 20-0192-JFW (AS), 2020 WL 4904866, at *2 n.6 (C.D. Cal. June 26, 2020) (“[T]o
12 state a claim, Plaintiff cannot rely simply on facts contained within exhibits and
13 attachments; he must instead allege the essential facts within the body of the
14 complaint itself, and thus provide fair notice to Defendants of the claims against
15 them”) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 & n.3 (2007)). As a
16 practical matter, Defendants cannot test the sincerity of Rolovich’s claimed religious
17 beliefs if he does not disclose them in his initial pleading; otherwise, they could
18 become a “moving target” throughout litigation. *See Love v. N.J. Dep’t of Corr.*, No.
19 CIV.A. 10-1714 (GEB), 2011 WL 345964, at *12 (D.N.J. Jan. 31, 2011) (expressing
20 difficulty in determining sincerity of plaintiff’s “unique religious beliefs” that kept
21 evolving such that the court could not discern them “with any degree of certainty
22 [or] predict with any reasonable approximation”). As the only concrete beliefs
23 alleged in the Complaint supporting Rolovich’s vaccine opposition are not religious
24 in nature, his Title VII claim fails as a matter of law and must be dismissed.

1 **C. The Complaint Fails to State a WLAD Claim (Count II)**

2 Rolovich’s WLAD claim fails for the same reasons as his Title VII claim. The
3 elements of a religious discrimination claim are the same under WLAD as Title VII,
4 and Washington courts look to federal cases to guide their interpretations of WLAD.
5 *See Kumar v. Gate Gourmet, Inc.*, 325 P.3d 193, 203 (Wash. 2014); *Black v. Grant*
6 *Cnty. Pub. Util. Dist.*, No. 2:17-CV-365-RMP, 2019 WL 2617236, at *7 (E.D.
7 Wash. June 26, 2019), *aff’d in part and rev’d in part on other grounds*, 820 F. App’x
8 547 (9th Cir. 2020). Just as with Title VII, WLAD requires the plaintiff to establish
9 a sincerely held and bona fide religious belief that conflicts with a requirement of
10 employment. *See Kumar*, 325 P.3d at 203 (“a plaintiff establishes a prima facie claim
11 of failure to accommodate religious practices by showing that (1) he or she had a
12 bona fide religious belief, the practice of which conflicted with employment duties;
13 (2) he or she informed the employer of the beliefs and the conflict; and (3) the
14 employer responded by subjecting the employee to threatened or actual
15 discriminatory treatment.”). As described above, Rolovich has not plausibly alleged
16 that he holds a truly *religious* belief, that this belief conflicted with a job
17 requirement, and that the belief was the basis for his separation. Accordingly, his
18 WLAD claim also fails as a matter of law and should be dismissed.

19 **D. Rolovich’s § 1983 Claims Must Be Dismissed (Counts V and VI)**

20 The Complaint pleads two separate claims under 42 U.S.C. § 1983—one
21 against all Defendants invoking the Free Exercise Clause (Count VI), FAC ¶¶ 140–
22 46, and the other against Defendant Chun invoking free exercise and due process
23 rights (Count V), *id.* ¶¶ 130–39. Both of these claims fail as a matter of law.

24 As a threshold matter, § 1983 “creates no substantive rights; it merely

1 provides remedies for deprivations of rights established elsewhere.” *City of*
2 *Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985). Specifically, “Section 1983
3 provides for liability against any person acting under color of law who deprives
4 another ‘of any rights, privileges, or immunities secured by the Constitution and
5 laws’ of the United States.” *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 887
6 (9th Cir. 2003) (quoting 42 U.S.C. § 1983). As a predicate to § 1983 liability, each
7 defendant must be a “person” acting “under color of [law],” 42 U.S.C. § 1983, and
8 must also “integrally participate in the unlawful [conduct],” *Reynaga Hernandez v.*
9 *Skinner*, 969 F.3d 930, 941 (9th Cir. 2020). Thus, the plaintiff “must plead that each
10 Government-official defendant, through the official’s own individual actions, has
11 violated the Constitution.” *Iqbal*, 556 U.S. at 676.

12 Under these principles, Rolovich’s § 1983 claims fail as to each WSU
13 Defendant, for three reasons. First, the claim against WSU must be dismissed
14 because it is not a “person” under § 1983. Second, the Complaint states no claim
15 against Chun because it does not plausibly allege his personal involvement in any
16 constitutional violation. Third, even if there were such allegations, the claims against
17 Chun must be dismissed because he has qualified immunity.

18 **1. WSU cannot be sued under § 1983**

19 No § 1983 claim may lie against WSU because it is statutorily exempt from
20 liability. A state, its agencies, and its officials who are sued in their official capacities
21 are not “persons” for purposes of § 1983. *Will v. Mich. Dep’t of State Police*, 491
22 U.S. 58, 70–71 (1989). A “state university is an arm of the state entitled to Eleventh
23 Amendment immunity,” and thus “not [a] ‘person[] within the meaning of § 1983.’”
24 *Riser v. WSU*, No. 2:18-CV-0119-TOR, 2018 WL 4955206, at *2 (E.D. Wash. Oct.

1 12, 2018) (quoting *Flint v. Dennison*, 488 F.3d 816, 825 (9th Cir. 2007)). For that
2 reason, this Court recently dismissed a similar § 1983 claim against WSU as “futile.”
3 *Doe v. Elson S. Floyd Coll. of Med. at WSU*, No. 2:20-CV-00145-SMJ, 2020 WL
4 11036961, at *3 (E.D. Wash. Dec. 30, 2020). The Court should do the same here
5 and dismiss Rolovich’s § 1983 claim against WSU with prejudice.

6 **2. Rolovich fails to state a § 1983 claim against Chun**

7 Rolovich also fails to plausibly allege facts supporting § 1983 claims against
8 Chun. In Count V, which asserts a § 1983 claim against Chun only, Rolovich pleads
9 nothing close to the required level of detail under *Iqbal* and *Twombly* to make out a
10 viable claim. FAC ¶¶ 130–39. A § 1983 plaintiff must allege both that (1) the
11 conduct complained of was committed by a person acting under color of state law,
12 and (2) the conduct deprived a person of a right, privilege, or immunity secured by
13 the Constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535
14 (1981), *overruled on other grounds*, *Daniels v. Williams*, 474 U.S. 327 (1986);
15 *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985). The complaint must set
16 forth the “specific injury-causing act or omission of” each individual defendant. *Holt*
17 *v. McDonnell*, No. CV 15-9632 R(JC), 2016 WL 7217572, at *4 (C.D. Cal. Dec. 12,
18 2016); *see also Brown v. Morgan*, No. C16-5975 RBL-TLF, 2017 WL 3454572, at
19 *2 (W.D. Wash. Aug. 11, 2017) (“A plaintiff must allege that he suffered a specific
20 injury as a result of the conduct of a particular defendant, and he must allege an
21 affirmative link between the injury and the conduct of that defendant.”) (citing *Rizzo*
22 *v. Goode*, 423 U.S. 362, 371–72, 377 (1976)). “Vague and conclusory allegations of
23 official participation in a civil rights violation are not sufficient to withstand a
24 motion to dismiss.” *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982).

1 Count V against Chun contains no specific factual allegations—only a
2 threadbare recitation of the rights asserted (free exercise and due process). FAC
3 ¶¶ 134–37. Instead of identifying the specific conduct by Chun that allegedly
4 infringed these rights, Rolovich argues vaguely that Chun “acted with willful malice,
5 and/or intentionally and in gross disregard of Mr. Rolovich’s constitutional rights,
6 and/or in reckless disregard of Mr. Rolovich’s constitutional rights.” *Id.* ¶ 138.
7 Rolovich’s failure to identify what these allegedly unconstitutional “act[s]” were
8 requires dismissal of Count V. *See Matthews v. Bergdorf*, 889 F.3d 1136, 1144 (10th
9 Cir. 2018) (to state § 1983 claim, complaint “must isolate the allegedly
10 unconstitutional acts of each defendant; otherwise the complaint does not provide
11 adequate notice as to the nature of the claims against each”) (cleaned up).

12 Count VI, Rolovich’s § 1983 claim against all Defendants, is equally
13 deficient. It alleges no Chun-specific conduct, focusing instead on the
14 constitutionality of the Proclamation itself and its purported “creation of a formal
15 mechanism for granting exemptions.” FAC ¶¶ 142–43. Rolovich fails to single out
16 any acts Chun personally took in violation of the Due Process Clause or the Free
17 Exercise Clause. The Complaint thus fails to state a § 1983 claim against Chun.¹⁴

18
19 ¹⁴ Although this claim asserts that all Defendants “terminated him . . . because
20 Mr. Rolovich had informed Defendants that religious convictions precluded him
21 from receiving a COVID-19 vaccine,” FAC ¶ 144, this conclusion is not supported
22 by the facts alleged in the Complaint—and the documents it incorporates by
23 reference—which demonstrate that Rolovich was fired because he was unvaccinated
24 and WSU determined he could not reasonably be accommodated without undue

3. Chun has qualified immunity

Even if the Complaint included allegations against Chun sufficient to state a claim (it does not), the § 1983 claim against him is still barred because he is entitled to qualified immunity. A public official sued in an individual capacity may assert a defense based on qualified immunity. *City & Cnty. of S.F. v. Sheehan*, 575 U.S. 600, 611 (2015).¹⁵ With qualified immunity, a defendant has immunity from suit provided his conduct does not “violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Courts consider two questions: (1) whether the facts, taken in the light most favorable to the non-moving party, show that the official’s conduct violated a constitutional right, and (2) whether the allegedly violated right was “clearly established.” *Pearson v. Callahan*, 555 U.S. 223, 232 (2009); *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Once a defendant raises this defense, “the plaintiff bears the burden of showing that the rights allegedly violated were ‘clearly established.’” *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1157 (9th Cir. 2000). The qualified immunity

hardship to WSU. *See, e.g., Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (courts need not accept as true allegations that “contradict matters properly subject to judicial notice or by exhibit” or are “conclusory, unwarranted deductions of fact, or unreasonable inferences”; “a plaintiff can . . . plead himself out of a claim by including unnecessary details contrary to his claims.”).

¹⁵ The Complaint makes clear that Chun is sued “in his individual capacity only,” FAC ¶ 13, though it simultaneously asserts that “[a]t all times relevant to this complaint, Patrick Chun was acting as an agent of WSU,” *id.*

1 issue “should be decided as early as possible in litigation—preferably before
2 discovery—as it is a complete immunity from suit, not solely a defense to
3 liability.” *Lilly v. Univ. of Cal.-San Diego*, No. 21-CV-1703 TWR (MSB), 2022 WL
4 11337682, at *11 (S.D. Cal. Oct. 19, 2022) (citing *Pearson*, 555 U.S. at 231–32).

5 Looking beyond Count V’s empty and generic recitations, the descriptions of
6 Chun’s conduct largely fall into three categories: (1) Chun’s meetings over several
7 months in 2021 with Rolovich regarding his vaccination status, FAC ¶¶ 30–46;
8 (2) Chun’s involvement in reviewing Rolovich’s request for an accommodation, *id.*
9 ¶¶ 64–70; and (3) Chun’s involvement in the decisions to deny Rolovich’s request
10 for an accommodation and terminate his employment for just cause, *id.* ¶¶ 90–96.¹⁶
11 Even taking all allegations as true, and importing them into his § 1983 claim,
12 Rolovich’s Complaint fails both prongs of the qualified immunity analysis.

13 **a. Rolovich does not plead a constitutional violation by Chun**

14 Rolovich’s Complaint fails to show how any of the alleged instances of
15 Chun’s conduct violated either the Free Exercise Clause or the Due Process Clause.

16 ***i. Chun did not violate Rolovich’s free exercise rights***

17 As to free exercise, Rolovich fails to show how the action of any defendant,
18 including Chun, amounted to unconstitutional “discriminat[ion] . . . because of
19 [Rolovich’s] religious beliefs.” FAC ¶ 134. “Where the claim is invidious
20 discrimination in contravention of the First . . . Amendment[],” the Supreme Court’s
21 “decisions make clear that the plaintiff must plead and prove that the defendant acted
22

23 ¹⁶ Rolovich also attacks Chun for alleged violations of WSU’s COVID-19 protocols,
24 which do not appear to relate to Rolovich in any way. *See* FAC ¶¶ 71–75.

1 with discriminatory purpose.” *Iqbal*, 556 U.S. at 676 (citing, inter alia, *Church of*
2 *Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540–41 (1993) (opinion
3 of Kennedy, J.)). Such “purposeful discrimination” requires that a “decisionmaker[]
4 undertak[e] a course of action because of, not merely in spite of, the action’s adverse
5 effects upon an identifiable group.” *Id.* at 676–77 (cleaned up). It follows that, to
6 state a claim against Chun for a free exercise violation, Rolovich “must
7 plead sufficient factual matter to show” Chun acted “not for a neutral . . . reason but
8 for the purpose of discriminating on account of . . . [Rolovich’s] religion.” *Id.* at 677.

9 As explained above in the context of Title VII and WLAD, Rolovich does not
10 plausibly allege facts showing that Chun acted against him *because of* his religious
11 beliefs. *See supra* Section III.B. Instead, the Complaint demonstrates that Rolovich
12 was fired not because of his religion, but because he was unvaccinated against
13 COVID-19, which was a condition for continued employment, and because the
14 Department determined that accommodating him would pose an undue hardship
15 given his job duties as head football coach. None of those facts remotely suggests
16 intentional discrimination on the basis of Rolovich’s religion. *Wise v. Inslee*, No.
17 2:21-CV-0288-TOR, 2022 WL 1243662, at *8 (E.D. Wash. Apr. 27, 2022)
18 (dismissing Title VII and § 1983 claims because “there is no indication that Plaintiffs
19 faced adverse employment decisions due to their sincerely held religious beliefs
20 rather than a failure to comply with the Proclamation”).

21 Nor does any Chun-specific allegation suggest that religious animus
22 motivated his actions. For instance, the Complaint alleges that Chun “made a number
23 of statements” that “demonstrated his hostility toward Mr. Rolovich’s expressed
24 religious, personal, and scientific reasons for refusing to receive a COVID vaccine.”

1 FAC ¶ 30. But it fails to identify any actions Chun took that reflected “hostility” to
2 Rolovich’s “religious reasons,” as opposed to Chun’s frustration at Rolovich’s
3 longstanding refusal to get vaccinated. Notably, the Complaint does not even allege
4 that Chun was ever aware of whatever “religious reasons” Rolovich had for opposing
5 the vaccine when he allegedly formed a “predetermination” to terminate him if he
6 did not get vaccinated. FAC ¶ 110. Quite the opposite: Rolovich expressly admits
7 that before August 19, 2021, he “had refrained from bringing his religious beliefs
8 into his conversations with Mr. Chun about COVID vaccines.” FAC ¶ 41. Nothing
9 in the Complaint supports an inference of any “discriminatory purpose” on the part
10 of Chun, which is a prerequisite to a claim of “invidious discrimination” under the
11 Free Exercise Clause. *Iqbal*, 556 U.S. at 676.¹⁷

12 ***ii. Chun did not violate Rolovich’s due process rights***

13 The Complaint also fails to tie Chun’s actions to any plausible due process
14 violation. As explained below, Rolovich has no viable due process claim against the
15 WSU Defendants. *See infra* Section III.E. But even if he had one, Chun’s individual
16 actions would not establish any violation. For instance, even if Chun—as Rolovich’s
17 supervisor—“inserted” himself into the accommodation determination, FAC at 16,
18 it would not violate the Due Process Clause, which “does not require a hearing before
19 a particular decision maker.” *Hunter v. Sup. Ct. of N.J.*, 951 F. Supp. 1161, 1181

20 _____
21 ¹⁷ As this Court has already held, an employer’s neutral and generally applicable
22 vaccine requirement is not a free exercise violation. *See, e.g., Bacon v. Woodward*,
23 No. 2:21-CV-0296-TOR, 2021 WL 5183059, at *4 (E.D. Wash. Nov. 8, 2021).
24 Logically, nor is Chun’s role in implementing such a requirement a violation.

1 (D.N.J. 1996), *aff'd*, 118 F.3d 1575 (3d Cir. 1997) (unreported) (citing *Opp Cotton*
2 *Mills v. Administrator*, 312 U.S. 126, 152 (1941)). To the extent Rolovich’s theory
3 is that Chun did not follow WSU’s own policies for processing exemption and
4 accommodation requests, his Complaint does not state a cognizable claim. A
5 government official’s failure to follow internal administrative policies—or even
6 state statutory or regulatory provisions—does not trigger a due process violation.
7 *See, e.g., Davis v. Scherer*, 468 U.S. 183, 194 & n.12 (1984) (“Officials sued for
8 constitutional violations do not lose their qualified immunity merely because their
9 conduct violates some statutory or administrative provision.”); *Cousins v. Lockyer*,
10 568 F.3d 1063, 1070 (9th Cir. 2009) (“state departmental regulations do not establish
11 a federal *constitutional* violation”).

12 In any event, Chun’s involvement in the accommodation decision was
13 perfectly consistent with WSU’s policies. As Rolovich acknowledges, after the
14 initial blind review of the exemption request, at the second step the employee’s
15 “supervisor would determine if the unvaccinated employee would be capable of
16 ‘keeping the public safe’ and perform his/her job effectively” with a reasonable
17 accommodation. FAC ¶ 62. In other words, it was “for the Athletics Department to
18 decide whether it was ‘able to accommodate [Rolovich’s] request.’” *Id.* ¶ 65. As the
19 head of the Department, Chun’s involvement is neither surprising nor prohibited—
20 and comes nowhere close to a constitutional due process violation.

21 Nor does the allegation that Chun “improperly influence[d] and interfere[d]
22 with the final decision made in [the] blind review process” finding that Rolovich had
23 a sincerely held religious belief. FAC ¶ 91. Again, Rolovich admits that the ultimate
24 authority on whether to grant an accommodation was the affected department, not

1 EH&S or the blind screening panel. FAC ¶¶ 62, 66. And nothing in WSU’s policy
2 forbade Chun from questioning the sincerity of Rolovich’s stated religious
3 objections based on information not available to the panel—including Rolovich’s
4 prior inconsistent statements to Chun and the last-minute timing of his religious
5 exemption request. *Id.* ¶¶ 45, 67; Pekelis Decl., Ex. E; *see, e.g., Aukamp-Corcoran*
6 *v. Lancaster Gen. Hosp.*, No. CV 19-5734, 2022 WL 507479, at *4 (E.D. Pa. Feb.
7 18, 2022) (because plaintiff’s “claimed religious objection to vaccination occurred
8 within a few days of her submitting a request for a religious exemption,” court found
9 “the timing of Plaintiff’s development of religious issues with vaccination to be
10 suspicious and . . . this timing points to a lack of sincerity in her religious beliefs”).

11 Finally, even if Rolovich could possibly have a cognizable due process
12 interest at stake in the blind review panel’s finding (and he does not), he admits that
13 the finding was not actually overturned. Although HRS wrote in its denial letter that
14 “the University *questions* the assertion that [Rolovich’s] sincerely held religious
15 views conflict with the University’s vaccine requirement,” his accommodation
16 request was ultimately denied because the Department found he “could not ‘safely
17 and effectively do [his] job without undue hardship to the University.’” FAC ¶¶ 91,
18 92 (emphasis added); *see* Pekelis Decl., Ex. H. Whatever “influence” Chun tried to
19 exert on the blind review panel finding, it was not determinative in the Department’s
20 denial of Rolovich’s accommodation request.

21 **b. Chun’s conduct violated no clearly established law**

22 Even if Rolovich could link Chun’s conduct to a constitutional violation with
23 the required specificity (he can’t), Chun would still be entitled to qualified immunity
24 because he did not violate clearly established law. As the Supreme Court has

1 “repeatedly” stated, courts are “not to define clearly established law at a high level
2 of generality.” *Sheehan*, 575 U.S. at 613 (cleaned up). Instead, “[t]he law must have
3 been clear enough that *every* reasonable official would know he or she was violating
4 the plaintiff’s rights.” *Felarca v. Birgeneau*, 891 F.3d 809, 816 (9th Cir. 2018)
5 (cleaned up). This “do[es] not require a case directly on point, but existing precedent
6 must have placed the statutory or constitutional question beyond debate.” *Ashcroft*
7 *v. al-Kidd*, 563 U.S. 731, 741 (2011). Precedent must “have been earlier developed
8 in such a concrete and factually defined context to make it obvious to all reasonable
9 government actors, in the defendant’s place, that what he is doing violates federal
10 law.” *Shafer v. Cnty. of Santa Barbara*, 868 F.3d 1110, 1117 (9th Cir. 2017).

11 Count V does not state with any specificity what “clearly established law”
12 Chun allegedly violated. Instead, it gestures vaguely at Rolovich’s “constitutional
13 right to the free exercise of religion, to be free from governmental hostility directed
14 at his religion, and his right to due process and equal protection under the law,”
15 without further explanation as to what these rights mean in this context. FAC ¶ 139.
16 This is precisely the sort of “high level of generality” that federal courts have found
17 insufficient to defeat qualified immunity. *See, e.g., Sabra v. Maricopa Cnty. Cmty.*
18 *Coll. Dist.*, 44 F.4th 867, 890 (9th Cir. 2022) (allegation “that the state cannot
19 condition a benefit or impose a penalty based on a person’s adherence or non-
20 adherence to a religious belief” was too “general” and “avoid[ed] the crucial
21 question whether the official acted reasonably in the particular circumstances that he
22 or she faced”) (quotations omitted); *Genas v. State of N.Y. Dep’t of Corr. Servs.*, 75
23 F.3d 825, 830–31 (2d Cir. 1996) (reversing district court’s conclusion that “the
24 contours of the right to be free from religious discrimination and an employer’s duty

1 to make reasonable accommodation for religious observance are clearly defined,”
2 which defined the right “at too abstract a level of generality”).

3 No facts alleged anywhere in the Complaint indicate that Chun violated any
4 clearly established law. For instance, Rolovich has no constitutional right to a
5 religious exemption from the Proclamation’s generally applicable vaccine
6 requirement (which was a clear condition of employment), or to an accommodation
7 (which WSU determined would have caused an undue hardship given Rolovich’s
8 position as head football coach). *See Wise*, 2022 WL 1243662 at *3–6. Instead, the
9 “clearly established law” is just the opposite: the State may establish generally
10 applicable vaccine requirements *without* affording a religious exemption. *Id.*; *see*,
11 *e.g.*, *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1178 (9th Cir.
12 2021) (“Limitation of the medical exemption in this way serves the primary interest
13 for imposing the mandate—protecting student ‘health and safety’—and so does not
14 undermine the District’s interests as a religious exemption would.”).

15 Likewise, Chun’s involvement in the accommodation decision did not violate
16 clearly established law. Recently, a court considered and rejected a similar challenge
17 to a university’s denial of employees’ requests for exemptions and accommodations
18 from a vaccination requirement. *Does 1-11 v. Bd. of Regents of Univ. of Colo.*, No.
19 21-CV-02637-RM-KMT, 2022 WL 4547563, at *6 (D. Colo. Sept. 29, 2022). The
20 court held that qualified immunity protected all supervisor defendants from liability
21 for their roles in the terminations, finding no “clearly established law” that enforcing
22 a vaccine policy violates the First Amendment. *Id.* (“Plaintiffs have not pointed to
23 any Supreme Court or Tenth Circuit authority holding that the First Amendment was
24 ever violated by any vaccination policy.”). The same is true here.

1 Next, although Rolovich accuses Chun of “influenc[ing] and interfer[ing]
2 with” either the blind review panel’s first-step finding or the accommodation
3 process, FAC ¶ 91, no case law (let alone clearly established law) makes such
4 conduct constitutionally suspect. The Free Exercise Clause did not require WSU or
5 Chun to adhere inflexibly to an initial sincerely-held belief finding based on a
6 committee’s “blind review” or to defer to accommodation ideas from external
7 departments like EH&S. Nor does Chun’s own involvement in the accommodation
8 process violate any clearly established due process precedent. *See, e.g., Sadid v.*
9 *Vailas*, 936 F. Supp. 2d 1207, 1216, 1231–32 (D. Idaho 2013) (university president’s
10 participation in pre-termination proceeding did not violate clearly established law
11 even where he had been publicly attacked by terminated employee).

12 Finally, even accepting Rolovich’s contention that the Department’s
13 accommodation determination was incorrect, *see* FAC ¶¶ 76–89, this would not
14 defeat Chun’s qualified immunity. Chun and the Department’s determination that
15 Rolovich could not be accommodated was supported by multiple objective
16 justifications, including Rolovich’s inability to safely lead practices, conduct
17 fundraising, travel and recruit players, or interface with the media without being
18 vaccinated. FAC ¶¶ 69–70. If that determination were somehow in error, Rolovich
19 still could not show that it was unreasonable in light of the “far-reaching” protections
20 of qualified immunity. *See Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*,
21 149 F.3d 971, 977 (9th Cir. 1998). The qualified immunity standard “gives ample
22 room for mistaken judgments” by protecting “all but the plainly incompetent or those
23 who knowingly violate the law.” *Hunter*, 502 U.S. at 229. As WSU’s Athletics
24 Director making difficult and time-pressured judgments in the midst of the pandemic

1 (during the Delta surge), Chun benefits from the “government interest in avoiding
2 unwarranted timidity on the part of those engaged in the public’s business.” *Filarsky*
3 *v. Delia*, 566 U.S. 377, 390 (2012); *see Mueller v. Aufer*, 576 F.3d 979, 993 (9th
4 Cir. 2009) (“holding officials liable for reasonable mistakes might unnecessarily
5 paralyze their ability to make difficult decisions in challenging situations, thus
6 disrupting the effective performance of their public duties”); *see also Univ. of Colo.*,
7 2022 WL 4547563, at *5 (“Given the unprecedented nature and global scope of the
8 Covid-19 pandemic as well as its devastating impacts, the Court finds the allegations
9 in the Complaint do not establish that these Defendants acted unreasonably in light
10 of existing precedent and in the specific context of this case.”).

11 Ultimately, Rolovich can identify no case law—or even established
12 constitutional principles—that defeat Chun’s qualified immunity. No reasonable
13 official confronted with the objective circumstances with which Chun was presented
14 would believe that his conduct violated the law (because it did not). Thus, Chun is
15 immune from Rolovich’s § 1983 claims, which should be dismissed with prejudice.

16 **E. The Complaint Fails to State a Due Process Claim**

17 While “due process” is passingly mentioned in the § 1983 claims (Counts V–
18 VI), Count VII alleges standalone procedural due process violations against all
19 Defendants. FAC ¶ 149 (alleging that WSU’s policies “granted WSU officials
20 unfettered discretion to disregard the process they created”). This claim fails as a
21 matter of law and should be dismissed with prejudice for multiple reasons.

22 First, no due process claim lies against WSU for the same reason no § 1983
23 claim lies against WSU. Claims that state agencies violated the U.S. Constitution
24 must be brought under § 1983. *Bank of Lake Tahoe v. Bank of Am.*, 318 F.3d 914,

1 917 (9th Cir. 2003); *Azul-Pacifico, Inc. v. City of L.A.*, 973 F.2d 704, 705 (9th Cir.
2 1992). WSU is not a “person” under § 1983, so it cannot be sued for damages for
3 alleged constitutional violations. *See Lake Tahoe*, 318 F.3d at 918 (construing equal
4 protection claim against state agency under § 1983 and dismissing it).

5 With respect to Chun, Rolovich’s claims also fail. Again, Rolovich’s claim
6 here is best construed as another § 1983 claim (since this is the only available
7 avenue), and it fails for many of the same reasons Count V did, including that Chun
8 has qualified immunity. *See supra* subsections III.D.2–3.

9 Even without those barriers, the Complaint would still not state any viable due
10 process claim against either WSU Defendant. Rolovich had no property interest, for
11 instance, in the religious accommodation he requested but did not receive. To qualify
12 as a constitutionally protected interest, a person must have a “legitimate claim of
13 entitlement to it.” *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972);
14 *see, e.g., Thornton v. City of St. Helens*, 425 F.3d 1158, 1166 (9th Cir. 2005)
15 (plaintiffs failed to show a property interest in state-issued certificate). An “abstract
16 need” or a “unilateral expectation” is not enough. *Thornton*, 425 F.3d at 1164. Here,
17 Rolovich was never granted a religious accommodation; at most, the university
18 informed him that it was “considering approving” his request. FAC ¶ 61. As such,
19 he never attained a protected interest in it. The “failure to grant [a plaintiff’s
20 requested] accommodations” under the Americans With Disabilities Act does not
21 “amount[] to a sufficient liberty or property interest under the due process clause to
22 give plaintiff a claim.” *Bartlett v. N.Y. State Bd. of Law Examiners*, 970 F. Supp.
23 1094, 1142 (S.D.N.Y. 1997) (Sotomayor, J.), *aff’d in part, vacated in part on other*
24 *grounds*, 156 F.3d 321 (2d Cir. 1998), *cert. granted, judgment vacated*, 527 U.S.

1 1031 (1999), and *aff'd in part, vacated in part on other grounds*, 226 F.3d 69 (2d
2 Cir. 2000); *see also Walker v. Newsom*, No. 2:20-cv-2243 TLN AC P, 2022 WL
3 1190458 at *6 (E.D. Cal. Apr. 21, 2022) (same); *Stamm v. N.Y.C. Transit Auth.*, No.
4 04-CV-2163 (SLT), 2006 WL 1027142, at *9 (E.D.N.Y. Feb. 7, 2006) (same).

5 Moreover, even if Rolovich had a protectable interest, the process Rolovich
6 received was constitutionally sufficient. Where, as here, “a policy is generally
7 applicable, employees are not entitled to process above and beyond the notice
8 provided by the enactment and publication of the policy itself.” *Wise*, 2022 WL
9 1243662, at *5 (cleaned up). Here, not only was the Proclamation enacted and
10 published, but WSU specifically notified Rolovich well in advance that it would be
11 implementing the Proclamation. FAC ¶¶ 15, 36, 45. Rolovich had ample opportunity
12 to request an exemption, which he ultimately did at the last minute. His termination
13 became final after two stages of appeal, and was ultimately approved by WSU’s
14 president. *Id.* ¶ 5. As of October 18, 2021, the Proclamation’s effective date,
15 Rolovich had not taken the vaccine and WSU had denied his requested
16 accommodation. *Id.* ¶ 90. The Proclamation thus prohibited WSU from allowing
17 Rolovich to continue working, and he was accordingly discharged. *Id.* ¶ 93. The
18 process Rolovich received was far more than the “enactment and publication” notice
19 to which he was entitled. *Wise*, 2022 WL 1243662, at *5.

20 Finally, Rolovich’s accusation that WSU officials “disregard[ed] the process
21 they created . . . and, therefore, abridged Mr. Rolovich’s right to due process” is
22 inapposite. FAC ¶ 149. As explained above, WSU complied with its own policies
23 and procedures—but even if it had not, that would not constitute a violation of
24 federal due process. *Jacobs v. Clark Cnty. School Dist.*, 526 F.3d 419, 441 (9th Cir.

1 2008) (school district did not violate the due process clause by implementing a dress
2 code without following its regulations requiring parental notification); *see also*
3 *Engle v. Isaac*, 456 U.S. 107, 121 n.21 (1982) (“We have long recognized that a
4 ‘mere error of state law’ is not a denial of due process.”). Lacking any legal basis,
5 Rolovich’s procedural due process claim should be dismissed with prejudice.

6 **F. Rolovich Has No Claim Under the State Constitution (Count III)**

7 Rolovich’s vague state constitutional claim appears to be wholly derivative of
8 his other claims, and fails as a matter of law not just for the reasons discussed above,
9 but also because it seeks damages only. *See* FAC ¶¶ 115–18. There is no private
10 right of action for damages under article I, section 11 of the Washington Constitution
11 because Washington does not recognize causes of action for damages based on
12 constitutional violations. *Blinka v. Wash. State Bar Ass’n*, 36 P.3d 1094, 1102
13 (Wash. Ct. App. 2001). Count III should be dismissed with prejudice.

14 **G. Rolovich’s Contract Claims Must Be Dismissed (Count I)**

15 Finally, Rolovich’s claims for breach of contract and breach of the “implied
16 covenant” of good faith and fair dealing fail as to both WSU and Chun. As to Chun,
17 the reason is simple: he is not a party to the Agreement. *See* FAC ¶ 16; ECF 1-1 at
18 36. Rolovich does not allege that Chun breached the Agreement. *See* FAC ¶¶ 98–
19 111. Nor could he have, for “a breach of contract is actionable only if the contract
20 imposes a duty.” *Nw. Indep. Forest Mfrs. v. Dep’t of Lab. & Indus.*, 899 P.2d 6, 9
21 (Wash. Ct. App. 1995). With no contractual duties owed by Chun in his individual
22 capacity, the contract claim against him fails as a matter of law. *See, e.g., Monaco*
23 *v. Liberty Life Assur. Co.*, No. C06-07021 MJJ, 2007 WL 420139, at *4 (N.D. Cal.
24 Feb. 6, 2007) (dismissing contract claim because “the Complaint reveals that [the

1 defendant] is . . . not a party to the insurance contract”). Similarly, “a claim for
2 breach of the implied covenant of good faith and fair dealing arises where there is
3 an enforceable contract in place between the parties.” *Davis Wire Corp. v. Teamsters*
4 *Loc. Union No. 117*, 152 F. Supp. 3d 1326, 1330 (W.D. Wash. 2015).

5 Rolovich’s contract claim against WSU also must be dismissed. The crux of
6 this claim is the allegation that “WSU breached its contract with Mr. Rolovich
7 because it did not have just cause to terminate” his employment. FAC ¶ 101. The
8 Agreement gives the term “Just Cause” its “normally understood meaning in
9 employment contracts.” ECF No. 1-1 at 43. In Washington, a termination for “just
10 cause” is “one which is not for any arbitrary, capricious, or illegal reason and which
11 is one based on facts (1) supported by substantial evidence and (2) reasonably
12 believed by the employer to be true.” *Baldwin v. Sisters of Providence in Wash.,*
13 *Inc.*, 769 P.2d 298, 304 (Wash. 1989). As many courts have recognized, “[j]ust
14 cause is a flexible concept, embodying notions of equity and fairness.” *Casper v.*
15 *Securitas Sec. Servs. USA*, No. 57235-1-I, 2007 WL 809933, at *3 (Wash. Ct. App.
16 Mar. 19, 2007) (unpublished) (quoting *Crider v. Spectrulite Consortium, Inc.*, 130
17 F.3d 1238, 1242 (7th Cir. 1997)). And “[w]hether the undisputed facts of a particular
18 case establish just cause is a question of law for the court.” *Crider*, 130 F.3d at 1242.

19 WSU’s decision to discharge Rolovich for just cause rested on multiple
20 grounds, at least one of which is undisputed and apparent on the face of the
21 Complaint: as of October 18, 2021, Rolovich was not vaccinated against COVID-
22 19, had not received an exemption and accommodation, and was thus legally
23 prohibited from working at WSU. (And Rolovich was not entitled to an exemption
24 and accommodation under any statutory or constitutional provision. *See supra*

1 Sections III.B–F.) As WSU’s president explained in denying his appeal, Rolovich
2 was “no longer eligible to engage in work for the University”—which, “by itself,
3 provides just cause for termination under the Agreement.” Pekelis Decl., Ex. K at
4 61–62; *see, e.g., Akers v. Brookdale Univ. Hosp. & Med. Ctr.*, No. CV06-
5 00350(3MC)(VVP), 2006 WL 2355842, at *3 (E.D.N.Y. Aug. 15, 2006) (“It seems
6 axiomatic if an employee fails to fulfill an express, material condition of her
7 employment . . . , that must constitute ‘cause’ for termination.”); *Reynolds v. Pierce*
8 *Transit*, No. 18881-3-II, 1996 WL 533602, at *6 (Wash. Ct. App. Sept. 20, 1996)
9 (unpublished) (transit agency had “just cause” because plaintiff “could not perform
10 his job as a bus driver”); *Comfort & Fleming Ins. Brokers, Inc. v. Hoxsey*, 613 P.2d
11 138, 141 (Wash. Ct. App. 1980) (“good cause” termination covers “causes inherent
12 in and related to the qualifications of the employee or a failure to properly perform
13 some essential aspect of the employee’s job function”) (citations omitted). Nor does
14 Rolovich’s conclusory and speculative allegation that WSU acted with nefarious
15 ulterior motives, *see* FAC ¶ 127, salvage his contract claim. *See, e.g., Linden v. X2*
16 *Biosystems, Inc.*, No. C17-966 RSM, 2019 WL 13240852, at *3–4 (W.D. Wash. Jan.
17 25, 2019) (dismissing breach of contract claim because there was “no plausible
18 inference Plaintiffs were terminated without just cause”; “the existence of
19 other *possible* reasons for the termination and the absence of prior precedent does
20 not show that the stated reason was not fair and honest or that Defendants were not
21 acting in good faith in this instance”). For those reasons, the contract claim against
22 WSU must also be dismissed with prejudice.

23 IV. CONCLUSION

24 The WSU Defendants ask the Court to dismiss the Complaint with prejudice.

1 DATED this 15th day of March, 2023.

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DATED this 15th day of March, 2023.

Erica Knerr